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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 DAVID JOHNSON,

13 Plaintiff[s],

14 vs.

15 ZVEZDE AND YVONNE JAKOVLESKI,

16 Defendants.

Case No. C-08-0837-BZ

**DEFENDANTS ZVEZDE & YVONNE
JAKOVLESKIS' ANSWER TO
COMPLAINT**

17
18 Defendants ZVEZDE AND YVONNE JAKOVLESKI hereby answer, object, and
19 otherwise Respond to the Complaint on file herein as follows:

20 FIRST CLAIM FOR RELIEF: DAMAGES AND INJUNCTIVE RELIEF FOR DENIAL OF
21 FULL AND EQUAL ACCESS TO A PUBLIC ACCOMODATION: PUBLIC FACILITIES
22 AT A RESTAURANT (Civil Code Sections 51, 54.1)

23
24 1. Defendants are without knowledge or information sufficient to form a belief as to
25 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
26 contained therein.

27 2. Admitted.

28 3. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
2 contained therein.

3 4. Defendants admit that this court has jurisdiction over such allegations.
4 Defendants admit that California law may apply to such allegations. Defendants are without
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 in this paragraph and on that basis, deny each and every allegation contained therein.

7 5. Defendants admit that venue is proper in this court. Defendants are without
8 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
9 in this paragraph and on that basis, deny each and every allegation contained therein.

10 6. Defendants are without knowledge or information sufficient to form a belief as to
11 the truth of the allegations in this paragraph and on that basis, deny each and every allegation
12 contained therein.

13 7. Admitted.

14 8. There are no allegations contained in paragraph eight of the complaint.

15 9. Defendants admit that they are the owner and lessor of the subject property.
16 Defendants deny that they are the operator, manager and lessee of the subject restaurant.
17 Defendants are without knowledge or information sufficient to form a belief as to the truth of
18 the remaining allegations in this paragraph and on that basis, deny each and every allegation
19 contained therein.

20 10. Defendants admit that Civil Code Sections 51 and 54.1 require legal compliance.
21 Defendants are without knowledge or information sufficient to form a belief as to the truth of
22 the remaining allegations in this paragraph and on that basis, deny each and every allegation
23 contained therein.

24 11. Paragraph 11 is a summary of Civil Code Sections 51 and 54, et. seq. and does
25 not contain any factual allegations for Defendants to admit or deny.

26 12. Paragraph 12 is a summary of law and does not contain any factual allegations
27 for Defendants to admit or deny.
28

1 13. Defendants deny that the restaurant's parking lot, entrance and men's restroom
 2 are inaccessible to people in wheelchairs. Defendants are without knowledge or information
 3 sufficient to form a belief as to the truth of the remaining allegations in this paragraph and on
 4 that basis, deny each and every allegation contained therein.

5 14. Defendants deny the allegations contained in this paragraph.

6 15. Paragraph 15 only cites plaintiff's prayer for injunctive relief. To the extent any
 7 allegations remain in this paragraph, Defendants are without knowledge or information
 8 sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis,
 9 deny each and every allegation contained therein.

10 16. Defendants deny the allegations contained in this paragraph.

11 17. Defendants deny the allegations contained in this paragraph.

12 18. Defendants deny the allegations contained in this paragraph.

13 SECOND CLAIM FOR RELIEF:

14 VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990

15 42 USC SECTION 12101FF

16 19. Defendants reassert their responses to paragraphs 1-18.

17 20. Paragraph 20 of the complaint only contains excerpts of law and does not contain
 18 any allegations for Defendants to admit or deny.

19 21. Paragraph 21 of the complaint only contains excerpts of law and does not
 20 contain any allegations for Defendants to admit or deny.

21 22. Paragraph 22 of the complaint only contains excerpts of law and does not contain
 22 any allegations for Defendants to admit or deny.

23 23. Paragraph 23 of the complaint only contains excerpts of law and does not contain
 24 any allegations for Defendants to admit or deny.

25 24. Defendants deny the allegations of the last sentence of paragraph 24. The
 26 remainder of paragraph 24 only contains excerpts of law and does not contain any allegations
 27 for Defendants to admit or deny.

28 25. Defendants deny the allegations contained in this paragraph.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every allegation contained therein.

27. Defendants deny the allegations contained in this paragraph.

PLAINTIFF'S PRAYER

1. Defendants deny the allegations contained in this paragraph.
2. Defendants deny the allegations contained in this paragraph.
3. Defendants deny the allegations contained in this paragraph.
4. Defendants deny the allegations contained in this paragraph.
5. Defendants deny the allegations contained in this paragraph.

AFFIRMATIVE DEFENSES

I.

AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that the complaint, and each claim therein, fails to state a claim upon which relief can be granted.

II.

AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege on information and belief that plaintiff did not exercise ordinary care, caution, or prudence to avoid the alleged event; consequently, the subsequent injuries or damages, if any, sustained by plaintiff were proximately caused by and contributed to by plaintiff's comparative negligence, and any damages they might otherwise be entitled to should be proportionately reduced by the degree of plaintiff's negligence.

III.

AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that the injuries and damages plaintiff complains of resulted from the acts and/or omissions of others, and without any fault on the part of defendant.

IV.

AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that plaintiff's claims are barred to the extent that he has failed to satisfy the

jurisdictional and/or statutory prerequisites for his causes of action, including the failure to exhaust appropriate administrative remedies.

V.

AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege that plaintiff's claims as set forth in the Complaint are barred because the accommodations and modifications sought by plaintiff is not required by law.

VI.

AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, defendants allege plaintiff's claims as set forth in the Complaint are barred because Defendants are in compliance with the applicable law and the property is readily accessible to the disabled.

VII.

AS A FURTHER, SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE, defendant alleges, on information and belief, that plaintiff failed to mitigate damages.

VIII.

AS A FURTHER, EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE, plaintiff's complaint seeks accommodations and modifications that would require the construction, alteration, repair, structural or otherwise, or modification that is beyond the requirements of the law and not otherwise readily achievable.

IX.

AS A FURTHER, NINTH SEPARATE AND AFFIRMATIVE DEFENSE, plaintiff's claims as set forth in the Complaint are barred in that plaintiff lacks standing and/or capacity to bring each claim, in that, among other things, plaintiff did not encounter any barriers to access with the property.

X

AS A FURTHER, TENTH SEPARATE AND AFFIRMATIVE DEFENSE, plaintiff's claims as set forth in the Complaint fail as a matter of law because, to the extent that plaintiff was not provided with full and equal accommodations, advantages, facilities or services

1 of defendants' facilities, it was because plaintiff failed to give defendants sufficient notice of the
2 need and sufficient opportunity to meet that need.

3 XI.

4 **AS A FURTHER, ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE,** to
5 the extend defendants had a duty to do so, defendants made every good faith effort to evaluate
6 and configure the readily achievable modifications to the property to permit access to
7 individuals qualified under the Americans with Disabilities Act ("ADA") and other laws which
8 protect persons with disabilities.

9 XII.

10 **AS A FURTHER, TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE,**
11 defendants' conduct was privileged and justified in that the plans, specifications and
12 improvements to the facility were approved by government officials authorized to do so and to
13 enforce compliance with the ADA and all other relevant regulations.

14 XIII.

15 **AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
16 plaintiff's claims are barred because pursuing modifications demanded by plaintiff would
17 fundamentally alter the benefits to the public or result in an undue burden.

18 **ADDITIONAL RESPONSES**

19 A.

20 Defendants currently have insufficient information upon which to form a belief as to
21 whether they may have additional, as yet unstated, defenses. Defendants reserve the right to
22 assert additional defenses in the event discovery indicates additional defenses are appropriate.

23 B.

24 To the extent Defendants have not expressly admitted an allegation of the Complaint or
25 denied an allegation of the Complaint based on a lack of information and belief, Defendants
26 deny all further and remaining allegations of the Complaint and no response contained herein is
27 intended to constitute a waiver of such denial.

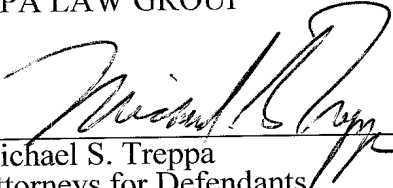
28 **WHEREFORE,** defendants pray that:

1. Plaintiff take nothing by his Complaint;
2. Defendants have judgment against Plaintiff;
3. Defendants be awarded costs of suit and reasonable attorneys fees; and
4. For such other and further relief as the Court may deem proper.

Dated: May 8, 2008

TREPPA LAW GROUP

By


Michael S. Treppa
Attorneys for Defendants
Zvezde & Yvonne Jakovleski

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHNSON

No. C-08-0837 BZ

Plaintiff(s),

CONSENT TO PROCEED BEFORE A
UNITED STATES MAGISTRATE JUDGE

JAKOVLESKI

Defendant(s).

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, U.S.C. Section 636(c), the undersigned party hereby voluntarily consents to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment. Appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

Dated: 5-8-08

Signature

Counsel for DEFENDANT JAKOVLESKI
(Plaintiff, Defendant or indicate "pro se")

PROOF OF SERVICE

STATE OF CALIFORNIA

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ss.

COUNTY OF CONTRA COSTA

I, the undersigned, state that I am a citizen of the United States and employed in the City of Walnut Creek, County of Contra Costa, State of California, in the office of a member of the bar of this court, at whose direction the service was made; that I am over the age of eighteen years and not a party to the within action; that my business address is 2033 North Main St., Suite 750, Walnut Creek, California 94596.

On the date set forth below, I served the following documents described as:

1. **DEFENDANTS ZVEZDE & YVONNE JAKOVLESKI'S ANSWER TO COMPLAINT**
2. **CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE**

as follows to the address(es) set forth below:

X I am familiar with my business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I placed a copy of the document described in a sealed envelope and caused such envelope with First Class postage thereon fully prepaid to be deposited in the United States mail at Walnut Creek, Contra Costa County, California.

_____ I placed a copy of the document described in a sealed envelope personally delivered the document.

_____ I placed a copy of the document described in a sealed envelope and caused document to be hand delivered by arranging for a commercial messenger delivery this date during Code of Civil Procedure defined business hours.

_____ I personally faxed or caused the faxing of the document to the facsimile number set forth below along with the address relevant thereto.

_____ I placed a copy of the document described in a sealed "Federal Express" envelope with a "Federal Express Airbill" attached with the address relevant thereto.

Thomas N. Stewart, III
369 Blue Oak Ln, 2nd Floor
Clayton, CA 94517

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 8, 2008

